



June 2016

INDIAN ENERGY DEVELOPMENT

Interior Could Do More to Improve Its Process for Approving Revenue-Sharing Agreements

Accessible Version

GAO Highlights

Highlights of [GAO-16-553](#), a report to the Chairman, Committee on Indian Affairs, U.S. Senate

Why GAO Did This Study

The development of Indian-owned oil and gas resources is one of the largest revenue generators in Indian country, and individual Indian mineral owners may rely on royalty payments from such development to pay for living expenses. Various offices within Interior are responsible for management and oversight of oil and gas development on Indian lands. In some cases, Indian-owned resources cannot be developed independently. In those cases, BLM reviews a revenue-sharing agreement known as a CA, and BIA approves it. Prior GAO reports identified an extensive backlog of Indian CAs awaiting review and approval, leading to significant delays in the payments of royalties to Indian mineral owners.

GAO was asked to review Interior's review and approval process for Indian CAs. This report examines Interior's recent guidance intended to streamline the review and approval process for Indian CAs and the effect this guidance may have on the timeliness of the process. GAO analyzed agency procedures and guidance and interviewed Interior officials responsible for managing the CA review and approval process.

What GAO Recommends

GAO recommends that Interior establish required time frames for the review and approval of Indian CAs, develop a systematic mechanism to track these CAs through the review process, and assess its actions to improve the timeliness of the process. Interior concurred with GAO's recommendations and described the actions it plans to take in response.

View [GAO-16-553](#). For more information, contact Frank Rusco at (202) 512-3841 or ruscof@gao.gov.

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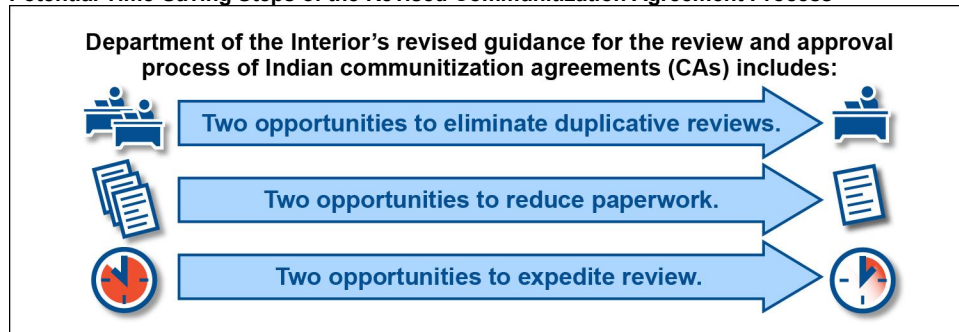
INDIAN ENERGY DEVELOPMENT

Interior Could Do More to Improve Its Process for Approving Revenue-Sharing Agreements

What GAO Found

The Department of the Interior (Interior) recently issued guidance intended to streamline the review process and reduce the approval times of oil and gas revenue-sharing agreements—called a communitization agreement (CA)—that include Indian resources. Under the revised guidance, for example, oil and gas operators are to provide simplified, less detailed information in their CA applications. In addition, the revised guidance eliminates some duplication in the Bureau of Indian Affairs' (BIA) and the Bureau of Land Management's (BLM) review processes.

Potential Time-Saving Steps of the Revised Communitization Agreement Process



Source: GAO analysis of Department of the Interior documents. | GAO-16-553

It is too early to determine the effect the revised guidance will have on the CA process, but Interior will be limited in its ability to assess the results of its actions for three reasons:

- Interior has established few time frames for the BIA and BLM offices that perform key tasks during the review and approval process. None of these time frames apply to BIA, which is ultimately responsible for approving an Indian CA. *Standards for Internal Control in the Federal Government* states that management should define objectives to include, among other things, time frames for achievement. Without time frames, BIA will be limited in its ability to hold offices accountable to ensure a more timely review process.
- BIA has no systematic way to track an Indian CA through the review process. A 2014 interagency plan to improve the federal permitting review process stated that the ability to track review times is a best practice to improve the federal review process. Without a systematic tracking mechanism, BIA will be unable to fulfill its monitoring role to ensure that documents move through the review process expeditiously.
- Interior's revised guidance does not include a plan to evaluate whether its efforts to streamline the process result in the more timely review of Indian CAs, and BIA officials told GAO that they have no plans for such an assessment. *Standards for Internal Control in the Federal Government* states that management should compare actual performance to expected results and analyze significant differences. Without conducting such an assessment, Interior will not know if the revised guidance has resulted in the more timely payments of royalties to Indian mineral owners.

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Abbreviations

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| APD | Application for Permit to Drill |
| BIA | Bureau of Indian Affairs |
| BLM | Bureau of Land Management |
| CA | communitization agreement |
| IEMSC | Indian Energy and Minerals Steering Committee |
| Interior | Department of the Interior |
| ONRR | Office of Natural Resources Revenue |
| OST | Office of the Special Trustee for American Indians |
| TAAMS | Trust Asset and Accounting Management System |

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June 13, 2016

The Honorable John Barrasso
Chairman
Committee on Indian Affairs
United States Senate

Dear Mr. Chairman:

In fiscal year 2015, the development of Indian-owned oil and gas resources generated more than \$1 billion in revenue for tribes and individual Indian mineral owners, according to the Department of the Interior (Interior), making oil and gas resources one of the largest revenue generators in Indian country. For some tribes, energy development is the foundation of their economy and the primary source of funding for education, infrastructure, and other public services. In addition, according to a report by Interior, individual Indian oil and gas resource owners may rely on revenue from oil and gas development to pay for living expenses, such as food, shelter, health care, and education.

The development of Indian oil and gas resources is governed by a number of federal laws, such as the Indian Mineral Leasing Act.¹ Several bureaus and offices within Interior—including the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and Office of Natural Resources Revenue (ONRR)—have responsibility for implementation of these laws and the oversight and management of Indian oil and gas development.² One of the functions that BIA and BLM perform under these laws and regulations is to review and approve revenue-sharing agreements—called a communitization agreement (CA)—that include

¹25 U.S.C. §§ 396a - 396g.

²Interior also has broader responsibilities for energy development on federal and Indian lands; however, the scope of this report is limited to Indian oil and gas resources that are held in trust by the United States for individual Indians or Indian tribes.

Indian resources.³ To promote conservation and efficient utilization of minerals, Interior approves CAs when an Indian lease cannot be independently developed and operated in conformity with established well spacing rules.⁴ In these cases, leases are consolidated to form a single spacing unit, and a CA is established to identify production allocation for the purpose of distributing revenue from oil and gas development in the form of royalties based on each mineral owner's percentage of ownership in that unit. Without an approved CA, royalties cannot be distributed to individual Indian mineral owners.

In recent years, advances in hydraulic fracturing and horizontal drilling, along with favorable economic conditions, resulted in significant increases in oil and gas development from shale formations, according to Interior and the Department of Energy's Energy Information Administration.⁵ Although prices for crude oil and natural gas have since declined, the leasing of Indian oil and gas resources continues in some areas of the country, as evidenced by ongoing lease sales held by BIA agency offices.⁶ According to a report by Interior, BIA has struggled to keep up with the demand for oil and gas leasing, permitting, and drilling. The number of CA applications submitted has surpassed BIA's and BLM's

³The federal government, tribes, Indian mineral owners, state governments, and private landowners can lease land to companies for the development of oil and gas resources. A CA may be necessary for royalty allocation when federal or Indian leases are involved that cannot be independently developed. For the purpose of this report, we are referring only to those CAs that include Indian leases—known as Indian CAs—and therefore must be approved by BIA.

⁴Spacing rules limit the number and location of wells that may be drilled into a reservoir by combining multiple tracts and leases into a single unified block, called a spacing unit, which ranges in size. 25 C.F.R. §§ 211.28 and 212.28.

⁵Shale is a sedimentary rock that is predominantly composed of consolidated clay-sized particles. Hydraulic fracturing involves pumping water, sand, and chemical additives into oil and gas wells at high enough pressure to fracture underground rock formations, such as shale, and allow oil and gas to flow into the well bore. When combined with horizontal drilling, hydraulic fracturing allows operators to fracture the rock formation along the entire horizontal portion of a well, increasing the number of pathways through which oil or gas can flow.

⁶Lease sales are conducted by BIA agency offices on specified tracts under regulations promulgated by the Secretary of the Interior. 25 C.F.R. Part 211 (governing tribal lands) and 212 (governing allotted lands). Although lease sales are allowed by the regulations for leasing of tribal land, according to Interior officials most tribal land is now leased through negotiation between the tribe and the prospective lessee.

ability to review and approve them in some areas of the country, such as North Dakota and Oklahoma, causing a severe backlog of work and preventing the timely distribution of oil and gas royalties to Indian mineral owners. For example, one oil and gas operator told us that during the boom period they held almost \$7 million in oil and gas royalties in an escrow account for Indian mineral owners because BIA and BLM delays in processing the CAs prevented ONRR from accepting payments from operators for the distribution of royalties to Indian mineral owners.⁷

BIA has noted that the circumstances that led to the backlog of energy-related leases and permits are beginning to occur in other states where Indian resources are being developed, such as Utah, New Mexico, and Montana. Interior officials have also noted that the current downturn in oil and gas leasing provides an opportunity to review the regulatory delays facing operators when attempting to lease and drill on Indian lands and streamline the process to encourage future development.

Our past reports have highlighted the importance of Interior's role in the management and oversight of federal and Indian energy resources and identified some challenges with the current system. In a May 2014 report, we found that BLM was not able to review CAs within required time frames, creating delays in the payment of royalties to the federal government, tribes, and individual Indian mineral owners.⁸ In that report, we recommended that Interior identify and take necessary steps to ensure that CAs are reviewed within required time frames, and Interior generally agreed with our recommendation. In addition, in a June 2015 report, we found that BIA could not ensure that its review process for energy-related documents was transparent or that such documents were moving forward in a timely manner.⁹ In that report, we recommended that Interior improve its review process by developing a documented process to track its review and response times. Interior did not fully concur with

⁷As described in more detail later in the report, ONRR manages revenues from Indian resources, including royalties generated by the production of energy and mineral leases.

⁸GAO, *Oil and Gas: Updated Guidance, Increased Coordination, and Comprehensive Data Could Improve BLM's Management and Oversight*, [GAO-14-238](#) (Washington, D.C.: May 5, 2014).

⁹GAO, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, [GAO-15-502](#) (Washington, D.C.: June 8, 2015).

our recommendation, but stated in a letter to us in August 2015 that BIA would try to implement a tracking and monitoring effort within its system of records for oil and gas leasing documents.

In this context, you asked us to examine Interior's review and approval process for CAs that include Indian leases. This report examines the actions Interior has taken to improve the timeliness of its review and approval of Indian CAs and the results of these actions.

For this review, we examined Interior's internal policies and guidance pertaining to the review and approval of Indian CAs, including BLM's Instructional Memorandum, issued on July 17, 2015, and BIA's National Policy Memorandum, issued on August 27, 2015, describing plans for a more streamlined process.¹⁰ Because these memorandums were issued less than a year ago, it is too soon to compare Indian CAs reviewed under the revised process with those reviewed under the former process. We also examined laws and regulations that pertain to Interior's role in the review and approval of Indian CAs. We interviewed BIA, BLM, ONRR, and other Interior officials at the headquarters and field levels who were familiar with the former CA review and approval process, as well as the proposed changes to this process. We selected officials from BIA and BLM field offices from various areas of the country that experienced a surge in oil development, which could result in an increase in demand for the review and approval of CAs.¹¹ Because this was a nonprobability sample, their responses are not generalizable to all BIA and BLM offices but provide examples of instances where offices did not review and approve an Indian CA in a timely manner and the actions, if any, these offices took to resolve the problems.

We conducted this performance audit from June 2015 to June 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain

¹⁰Department of the Interior, Bureau of Land Management, *Re-engineered Communitization Agreement Approval Process*, Instruction Memorandum No. 2015-124 (Washington, D.C.: July 17, 2015). Department of the Interior, Bureau of Indian Affairs, *Revised Communitization Review Procedures*, NPM-TRUS-34 (Washington, D.C.: Aug. 27, 2015). BIA's National Policy Memorandum states that it expires on August 27, 2016.

¹¹These officials work in offices that cover areas of Colorado, Montana, New Mexico, North Dakota, Oklahoma, Utah, and Wyoming.

sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Development of Indian energy resources is a complex process that may involve a range of stakeholders, including federal agencies, state agencies, tribal governments, individual Indian mineral owners, and private oil and gas operators. When an operator seeks to develop land that includes Indian resources, the operator must identify ownership of surface and subsurface resources and acquire a lease for the right to drill for oil and gas resources, among other things. BIA maintains these surface and mineral ownership records, including lease information. There are several ways in which Indian oil and gas resources can be leased. For example, oil and gas resources can be nominated for lease by operators, the tribe, or an individual Indian mineral owner. BIA then reviews nominated oil and gas resources to determine ownership, and in some cases, BLM may assist with identifying ownership of the proposed parcels. If the resources are not already leased, BIA may advertise and conduct competitive lease sales where operators can bid on nominated leases. BIA reviews the bids, identifies the highest bidder, notifies the operator whether its bid was accepted, and issues the lease.¹²

An Indian lease document comprises a primary term and a secondary term, both of which are negotiated as part of the lease agreement. The primary term is the time frame in which the company has to begin drilling or the lease will expire. The length of this term varies, but it usually ranges from 2 to 10 years for Indian leases, according to Interior officials. The secondary term is established after production begins and remains in effect as long as the well is producing in paying quantities. The lease also consists of three payment types between the operator and the tribe or Indian mineral owner: (1) a onetime bonus payment paid per acre

¹²In other cases, tribes and individual Indians can lease their own oil and gas resources. For example, under the Indian Mineral Development Act, subject to BIA approval, a tribe may enter into an agreement to develop minerals in which the tribe owns an interest. 25 U.S.C. §§ 2101-08.

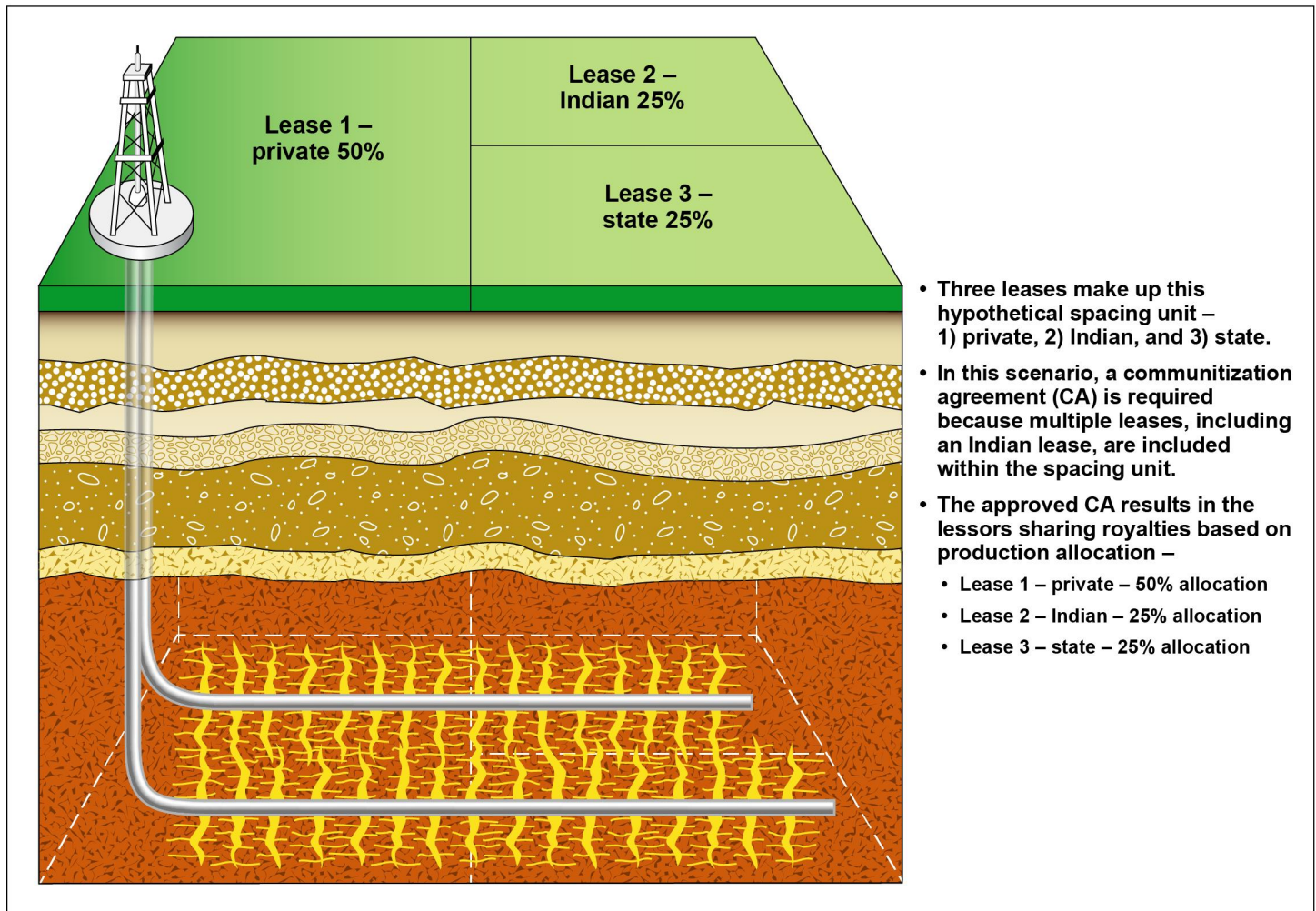
following lease approval, (2) an annual rental payment for the leased land, and (3) ongoing royalty payments for development of the resource.¹³

If an Indian lease cannot be independently developed in conformity with well spacing requirements set by the state and BLM, the operator developing an area including Indian mineral interest must request approval of a CA from BIA.¹⁴ Production from a well located within the CA is attributed to the entire area—meaning that all owners share a percentage of the royalties based on their percentage of surface ownership, regardless of where the well is located. According to BIA's *Fluid Mineral Estate Procedural Handbook*, communitization serves a conservation function by eliminating excessive drilling and minimizing surface disturbance, while protecting adjoining properties from drainage of their minerals. Figure 1 illustrates a hypothetical example in which three leases are included in an approved CA. The example shows how royalties are allocated among each lessor.

¹³The minimum royalty rate for Indian leases is 16.67 percent.

¹⁴BIA regulations provide that a request for approval of a proposed agreement must be filed with BIA at least 90 days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the agreement. 25 C.F.R. §§ 211.28(e) and 212.28(e).

Figure 1: Example of Royalty Sharing Based on an Approved Communitization Agreement



Source: GAO. | GAO-16-553

A CA must be approved before operators can distribute royalty payments for Indian leases to the appropriate mineral owners. BIA, through several divisions and its various regional and agency offices, has primary authority for managing Indian energy development and has ultimate approval authority for Indian CAs. BIA may approve a CA if it determines that approval “is advisable and in the best interest of the Indian mineral

owner”.¹⁵ However, other offices within Interior also have a role in the development and accounting of Indian energy resources in regard to CAs. For example, BLM reviews a CA application and recommends to BIA whether to approve an Indian CA based on the engineering and technical aspects. Operators send royalty payments from the production of Indian mineral leases to ONRR. Once the CA is approved by BIA and production has been established, payments are made to ONRR, unless otherwise provided for by the lease. ONRR transfers royalty payments to the appropriate Indian accounts, and the Office of the Special Trustee for American Indians (OST) makes the royalty payments to Indian mineral owners based on instructions from BIA. An approved CA is effective on either the date of first production or the date the CA is approved, whichever is earlier. Traditionally, Interior encouraged the operator to submit an Indian CA before the well was drilled, but it was common for operators to wait until the results of the well were known before submitting the CA application, according to Interior officials.

In recent years, some offices within Interior have taken actions to address the backlog of CAs in their regions. For example, we previously reported that in North Dakota the BLM Dickinson field office, BIA Fort Berthold agency office, and ONRR created a preliminary CA process in March 2011 to address the backlog of CAs in their region.¹⁶ According to Interior officials, the preliminary CA process was used by some BIA and BLM offices as an interim step to ensure the timely collection and distribution of royalties while operators prepared the required documents for a complete CA application. However, in early 2015 Interior’s Office of the Solicitor instructed BIA and BLM to cease using this process. The Office of the Solicitor determined that preliminary CAs were not legally binding because documents used in the process were not formally reviewed, approved, and signed by the Secretary of the Interior or the Secretary’s designee.

In addition, Interior officials said that they signed a contract with Lockheed Martin in October 2011 that included providing technical assistance and additional staff to help expedite the processing and approval of CA packages at the BIA Fort Berthold agency office. We previously reported

¹⁵25 C.F.R. §§ 211.28(a) and 212.28(a).

¹⁶[GAO-14-238](#).

that some BIA offices did not have adequate staff resources or staff with the skills needed to effectively evaluate energy-related documents, including the large number of CAs.¹⁷ According to Interior officials, the additional staff and technical resources that the Lockheed Martin contract provided allowed the office to review and approve more CAs than it otherwise could have. However, Interior officials told us that because the contract is scheduled to end in September 2016, some of these functions will subsequently be administered directly by Interior's recently established Indian Energy Service Center.¹⁸ As of March 2016, according to Interior officials, the Service Center has some funding available for fiscal year 2016 and is in the process of hiring a director, identifying overall staffing needs, and defining its roles and responsibilities. We are examining the roles and responsibilities of the Indian Energy Service Center in a separate ongoing review.

Interior Has Taken Actions to Streamline the Review and Approval Process, but Three Weaknesses Will Effect Its Ability to Assess the Results of Its Actions

In the summer of 2015, BIA and BLM issued guidance in an effort to streamline the CA review and approval process and address the backlog of Indian CAs awaiting review and approval. The guidance seeks to shorten the time required to review and approve a CA by, among other things, reducing paperwork, eliminating duplicative reviews, and expediting the review of key information early in the process. However, Interior does not have plans to set time frames for CA reviews, systematically collect data on review times, or assess the effect of its revised guidance. As a result, Interior will be unable to determine whether the resulting actions have had a positive effect on the CA review and approval process.

BIA and BLM Issued Guidance Intended to Streamline the CA Review and Approval Process

In 2015, BIA and BLM worked collaboratively to develop guidance intended to streamline the CA review and approval process and help address the current backlog of Indian CAs awaiting approval. Specifically, in July 2015, BLM issued guidance that called for the CA approval process to be streamlined to ensure the more timely payment of royalties

¹⁷[GAO-15-502](#).

¹⁸On October 10, 2015, the BIA, BLM, ONRR, and OST signed a memorandum of understanding to establish the Indian Energy Service Center to expedite Indian oil and gas activities, among other things.

to Indian mineral owners.¹⁹ Approximately one month later, BIA issued corresponding guidance to ensure the timely review, adjudication, and approval of Indian CAs.²⁰

The guidance for both BIA and BLM, which we refer to in this report as the revised guidance, was developed through a collaboration between BLM, BIA, ONRR, and OST senior officials who attend biannual meetings of the Indian Energy and Minerals Steering Committee (IEMSC).²¹ According to Interior officials, the revised guidance incorporates best practices of individual offices and standardizes the CA review and approval process to better ensure consistency of approval methods in offices across the country. The guidance also helps to clarify and delineate the responsibilities of BIA, BLM, and the operators.

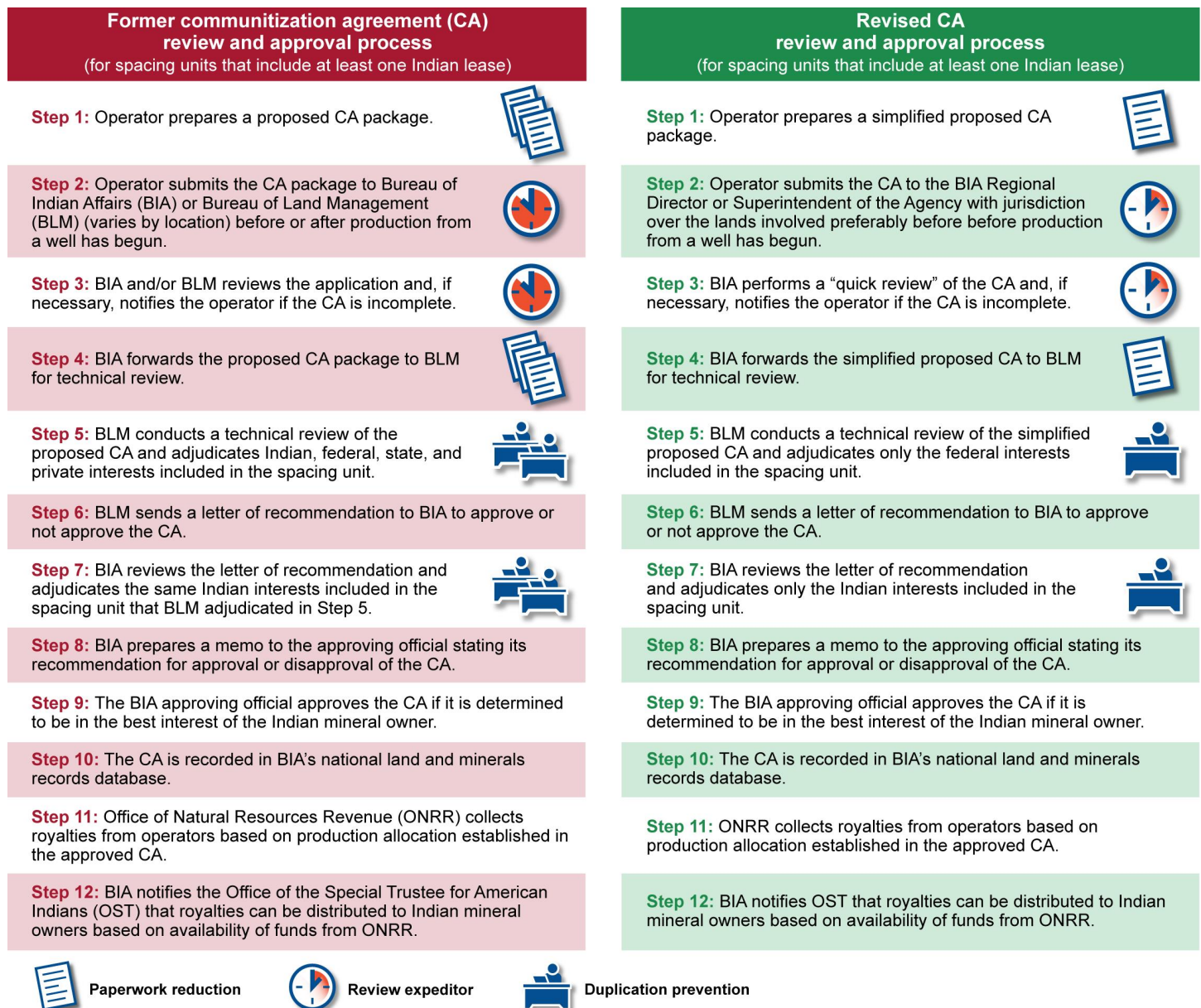
Based on our review of Interior's former and revised guidance and supporting documents, the revised process includes approximately the same number of steps as the former process. However, as shown in figure 2, the revised process includes various steps designed to reduce paperwork, eliminate duplicative reviews, and expedite the review of key information early in the process, which, according to the guidance, should dramatically reduce CA adjudication and processing times.

¹⁹Department of the Interior, Bureau of Land Management, *Re-engineered Communitization Agreement Approval Process*.

²⁰Department of the Interior, Bureau of Indian Affairs, *Revised Communitization Review Procedures*.

²¹The IEMSC is a committee within Interior that includes senior managers and staff with a focus on Indian trust energy and mineral policies and issues. According to Interior officials, beginning in 2014 the IEMSC held meetings to discuss the increased workload and emerging complexity of CAs because of the boom in oil and gas drilling activity.

Figure 2: Comparison of the Department of the Interior’s Former and Revised Processes for Reviewing Communitization Agreements for Indian Energy Development



Source: GAO analysis of Department of the Interior documents. | GAO-16-553

Specifically, Interior took the following actions in an effort to streamline the CA process:

- **Reducing paperwork:** The new guidance reduces and simplifies the information required to be submitted to BIA and BLM as part of a the CA package by, among other things, allowing operators to combine all nonfederal and non-Indian ownership interests, such as private and state interests, into a single entry representing total acreage. As a result, information such as the individual lease date, lease term, and lessor is no longer required by BIA and BLM. According to the revised guidance, BLM now verifies the total acreage and land description of the proposed CA. One operator told us that this change will significantly reduce the amount of paperwork submitted to BIA and BLM for review. For example, according to the operator, BIA and BLM used to review CAs with attachments numbering approximately 400 pages of lease information, often in hardcopy; in contrast, the attachments may now be as few as 10 pages of lease information. In addition, the revised guidance states that BIA and BLM should already have the necessary information for Indian and federal leases. According to officials, BIA and BLM used to verify the signatures of all interest owners that were party to the CA but did not have the staff to accomplish this task in a timely manner. The revised guidance allows operators to self-certify that they have collected the necessary signatures, including signatures from private and state interests, which, according to officials, further decreases the amount of information federal officials are responsible for reviewing and places the burden on operators to collect such information.²² The reduction in paperwork submitted is expected to reduce the workload for both BIA and BLM offices.
- **Eliminating duplicative reviews:** According to several BLM officials, BLM's technical review of an Indian CA traditionally involved the adjudication of federal, Indian, state and private interests, which required the individual verification of acreage, ownership, and operating rights, resulting in lengthy reviews of the CA package. After BLM's technical review, according to officials, BIA would adjudicate ownership of the same Indian leases, duplicating BLM's efforts and

²²An Indian lease generally includes an agreement clause by which the mineral owner accepts future pooling and unitization, if approved by the Secretary of the Interior, when the lease is signed. See also 25 C.F.R. § 211.28(b).

the review time. However, under the revised process, BIA is to adjudicate only Indian interests and BLM is to adjudicate only federal interests within the proposed CA. The revised guidance places responsibility for adjudication with the agency that has the expertise to verify the necessary information. For example, the new guidance makes BIA responsible for information it currently maintains and is independently knowledgeable of, such as lease records for Indian interests. While it is too soon to determine the extent to which reducing duplication of effort will reduce the time needed to review and approve Indian CAs, the new guidance appears to more clearly define the separate roles of BIA, BLM, and the operators in the CA process.

- **Expediting the review:** Several BIA and BLM officials noted that under the former process, operators often submitted proposed CAs in an incomplete form or to the wrong office, which ultimately led to review and approval delays. Under the revised process, operators must submit the proposed CA directly to the BIA Regional Director or Superintendent of the Agency with jurisdiction over the lands included in the CA. BIA has noted that an operator's failure to file an Indian CA with the appropriate BIA office puts the company at risk of not complying with regulation and not having an approved CA in place before expiration of the Indian lease(s).²³ In addition, according to the revised guidance, BIA is now tasked with performing a "quick review" early in the process to determine if there are problems with the information provided by the operator that could ultimately delay CA approval. The revised guidance notes that BIA will take the lead in documenting potential errors in the proposed package, such as potential acreage errors that could affect royalty payments, and if necessary, will quickly notify BLM and the operator. The guidance also notes that this is an important step considering the length of time it takes for CAs to be adjudicated and recommended for approval. Again, it is too soon to determine the extent to which the earlier submission of a complete CA by the operator to the appropriate BIA office may help ensure the timely review of an Indian CA and ultimately the more timely payment of royalties to Indian mineral owners.

²³25 C.F.R. §§ 211.28(e) and 212.28(e).

The revised guidance also includes BIA's and BLM's new goals for streamlining the CA review process. BIA's guidance states that its goal is to address, devise, and implement a solution when there are problems with a CA before the well is completed and any royalty payments are made. Similarly, BLM's guidance states that its goal is to have an approved CA in place before the date of first production in order to allow the operator to pay royalties to the mineral owner from the start of production.²⁴ According to Interior officials, under the former process, CAs were sometimes approved years after production began, leading to accounting challenges to recoup and distribute royalties to Indian mineral owners at a later date. It is Interior's goal, as noted in the revised guidance, to identify and address any problems that may exist with an Indian CA early in the review process to help ensure the more timely approval of the CA, ideally before oil and gas development begins.

Interior Will Not Be Able to Fully Assess the Results of Its Recent Actions to Streamline the CA Process without Required Time Frames and a Systematic Tracking Mechanism

BIA and BLM developed the revised guidance with the intent to expedite the review and approval of CAs and ensure the more timely payment of royalties to Indian mineral owners, but Interior has established few time frames for the BIA and BLM offices that perform tasks during the review and approval process and BIA has no mechanism in place to track Indian CAs. In addition, the revised guidance does not include plans to assess whether its efforts to streamline the CA review and approval process result in the more timely review of Indian CAs.

Standards for Internal Control in the Federal Government states that management should define objectives to include what is to be achieved, who is to achieve it, how it will be achieved, and the time frames for achievement.²⁵ However, no statute, regulation, or internal procedures specify a time frame by which BIA, as the approving office for an Indian

²⁴According to BLM's revised guidance, BLM will work with industry to encourage the operator to submit a CA to the appropriate agency at the same time the operator submits an Application for Permit to Drill (APD) or at least 90 days before the anticipated date of first production. The guidance states that BLM may require timely submission of a CA as a condition of approval for the APD. An operator that has obtained a lease for federal or Indian minerals must submit an APD to BLM for approval prior to drilling. 43 C.F.R. § 3162.3-1(c).

²⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

CA, is required to review or approve an Indian CA. In contrast, according to statute, BLM is to review CAs and issue determinations of allocation within 120 days of a request.²⁶ Interior's standard operating procedures that govern energy development of federal and Indian resources note that BLM is to review and recommend whether to approve an Indian CA within 30 days of BIA's request; again, these procedures do not include a time frame for BIA's role in the review and approval of an Indian CA.²⁷ Many Interior officials we spoke with stated that some BLM offices treat the 30-day time frame as a suggestion rather than a requirement and said that offices within their regions rarely meet the time frame because of overwhelming workloads and staffing shortages, which is consistent with the findings in our May 2014 report.²⁸ Senior BIA officials told us that establishing time frames for BIA could help ensure a more transparent and efficient Indian CA review and approval process. Without required time frames, Interior is limited in its ability to ensure that BIA and BLM reviews of Indian CAs help the agency meet its objective to provide for a more timely CA review and approval process.

In addition, according to the revised guidance, it is BIA's responsibility to monitor the review and approval times for Indian CAs; however, BIA currently has no systematic mechanism in place to track an Indian CA through the review and approval process and the revised guidance did not establish such a mechanism. BIA officials in some field offices told us that they maintain an informal tracking document, typically a spreadsheet, to track the CAs their office is reviewing; however, this document is usually not accessible by officials outside their field office, including coordinating agency officials and headquarters staff. An interagency plan created in May 2014 in response to Executive Order 13604 notes that the ability to track and monitor the review of permits and applications is a best

²⁶30 U.S.C. § 1721(l). This requirement does not apply to Indian CAs. Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. No. 104-185, § 9 (1996), amending the Federal Oil and Gas Royalty Management Act of 1982.

²⁷Department of the Interior, *Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures* (Oct. 1, 2013).

²⁸[GAO-14-238](#). This report focused on BLM's management of federal and Indian oil and gas resources, therefore it did not specifically address BIA time frames.

practice to improve the federal review process.²⁹ In our June 2015 report, we found that BIA did not have a process to track its review and response times for energy-related documents, including CAs.³⁰ In our report, we recommended that, to improve the efficiency and transparency of its review process, BIA should develop a documented process to track its review and response times.³¹ Interior did not fully concur with our recommendation, but in an August 2015 letter to us noted that BIA intends to enhance its national database—the Trust Asset and Accounting Management System (TAAMS)—by improving the tracking and monitoring of oil and gas leasing documents by the end of fiscal year 2017. According to officials, BIA does not currently enter CAs into TAAMS until after the CAs are approved because the system is not used to track oil and gas documents through the review process.³² BIA officials told us that a subject matter expert group was formed in July 2015 to evaluate the need for system updates to TAAMS, but that the group has no specific plans to include recommendations associated with the tracking of Indian CAs. The revised guidance does not explain how BIA will monitor the review and approval times of Indian CAs without information on the length of time BIA and BLM offices are taking to review and approve these CAs. Without a systematic tracking mechanism to collect information that is accessible by coordinating officials and headquarters staff, Interior will be unable to fulfill its objective to ensure that Indian CAs are being reviewed and approved in a timely manner.

In addition, although the revised guidance states that the proposed actions should “dramatically reduce” adjudication and processing times to ensure the more timely review and approval of CAs, it does not include a plan to assess the process to determine if Interior has met this policy objective. A senior BIA official confirmed that the agency has no plans to track the results and assess the time-saving elements included in the

²⁹An interagency steering committee was developed in response to Executive Order 13604, which calls for agencies to improve federal permitting and review processes. In 2014, the Steering Committee released the *Implementation Plan for the Presidential Memorandum on Modernizing Infrastructure Permitting*.

³⁰[GAO-15-502](#).

³¹[GAO-15-502](#).

³²TAAMS stores historical and current data on ownership and leasing of Indian land and minerals.

revised CA process. Instead, according to this official, BIA's current focus is to work through the existing backlog of Indian CAs and complete the review and approval of these applications. However, *Standards for Internal Controls in the Federal Government* states that management should compare actual performance to expected results and analyze significant differences. Without a plan to assess the effect of its revised guidance on the Indian CA review and approval process, Interior will not be able to compare actual performance against the objective of a more timely process, which may also prevent it from identifying further improvements, if needed, to the process in the future.

Conclusions

BIA and BLM issued revised guidance in an effort to streamline the review and approval process for Indian CAs. However, a number of factors will limit BIA's ability to ensure that the resulting actions have had a positive effect on the process and lead to the more timely review and approval of Indian CAs. Specifically, as Interior has not established required time frames by which an Indian CA should be reviewed and approved, BIA will be limited in its ability to hold offices accountable to ensure that Indian CAs are reviewed and approved in a timely manner. In addition, because BIA does not have a systematic mechanism to track an Indian CA through the process, it will be unable to fulfill its monitoring role to ensure that CAs are reviewed and approved in a timely manner. Finally, because Interior does not have a plan to assess the results of its revised guidance on the Indian CA process, the agency will be unable to determine whether it has achieved its policy objectives, such as decreasing the time needed to review and approve Indian CAs, designed to result in the more timely disbursement of royalties to Indian mineral owners. Without the ability to assess the effect of its revised guidance on the Indian CA review and approval process, Interior may not have enough information to make further improvements, if needed, to the process.

Recommendations for Executive Action

We recommend that the Secretary of the Interior direct the Director of the Bureau of Indian Affairs and, as appropriate, the Director of the Bureau of Land Management to take the following three actions:

- Establish required time frames for the review and approval of Indian CAs to ensure a more timely CA process.
- Develop a systematic mechanism for tracking Indian CAs through the review and approval process to determine, among other things,

whether the revised CA process meets newly established time frames.

- Assess whether the revised CA process is achieving its objective to improve the timeliness of the review and approval of Indian CAs, and if not, make changes as appropriate.

Agency Comments

We provided Interior with a draft of this report for review and comment. In its written comments, reproduced in appendix I, Interior concurred with our recommendations. In response to our recommendation about establishing required time frames for the review and approval of Indian CAs, Interior stated that BIA will issue a National Policy Memorandum that establishes such time frames. In response to our recommendation about developing a systematic mechanism for tracking Indian CAs, Interior stated that BIA will develop such a mechanism in TAAMS, and until that modification is made, BIA and BLM will use a centralized tracking spreadsheet. Finally, in response to our recommendation about assessing the revised CA process, Interior stated that both BIA and BLM will use the tracking spreadsheet, and, upon completion, the enhanced TAAMS, to monitor and assess the results of the efforts to streamline the process, and establish a process for review of the collected data to identify and implement any necessary process modifications.

As agreed upon with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of the Interior, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or ruscof@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink that reads "Frank Rusco". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Frank Rusco
Director, Natural Resources and Environment

Appendix I: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAY 3 1 2016

Mr. Frank Rusco
Director
Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Rusco:

Thank you for providing the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled *Indian Energy Development: Interior Could Do More to Improve Its Process for Approving Revenue-Sharing Agreements* (GAO 16-553). We appreciate GAO's analysis of the Department's review and approval process for Indian Communitization Agreements (CA).

The GAO's overall findings led it to issue three recommendations to the Department. These findings and recommendations will enhance the Department's ability to ensure that Indian CAs are processed in a timely manner. The Bureau of Indian Affairs (BIA) and the Bureau of Land Management (BLM) will work collaboratively to take the planned actions. We concur with the recommendations and offer the following responses.

In response to the first recommendation, which calls for the Department to ensure a more timely CA process, the BIA will issue a National Policy Memorandum that establishes time frames for the review and approval of Indian CAs. Those timelines will be incorporated into the BIA Fluid Mineral Estate Procedural Handbook and the Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures. BLM already has a 30-day timeframe in place for the review of Indian CAs, following a BIA request for BLM to review and recommend whether to approve or not approve an Indian CA.

To address GAO's second recommendation, which calls for the Department to develop a mechanism to monitor the processing of Indian CAs, the BIA will develop a systematic mechanism for tracking Indian CAs through the review and approval process. As part of this effort, a group of BIA subject matter experts who meet periodically will work to implement identified enhancements to the BIA system of record, Trust Asset and Accounting Management System (TAAMS). Until TAAMS can be modified to incorporate the key identifiers and data fields, a centralized tracking spreadsheet will be utilized. BIA will lead the development and deployment of this tracking spreadsheet, in consultation and coordination with BLM.

Lastly, to address GAO's third recommendation, which calls for the Department to assess whether the revised CA process has improved the timeliness, both Bureaus will use the tracking spreadsheet mentioned above, and, upon completion, the enhanced TAAMS, to monitor and assess the results of the efforts to streamline the Indian CA review and approval process. The

Bureaus will coordinate to establish a process for review of the collected data, which will assist in identifying and implementing any necessary process modifications.

If you have any questions or need additional information, please contact me.

Sincerely,



Kristen J. Sarri
Principal Deputy Assistant Secretary
Policy, Management and Budget

Appendix II: GAO Contact and Staff Acknowledgements

GAO Contact

Frank Rusco, (202) 512-3841 or ruscof@gao.gov

Staff Acknowledgments

In addition to the contact named above, Christine Kehr (Assistant Director), Patrick Bernard, Richard Burkard, Patricia Chen, Cindy Gilbert, Alison O'Neill, Dan C. Royer, Jay Spaan, and Amy Ward-Meier made key contributions to this report.

Appendix III: Accessible Data

Agency Comment Letter

Text of Appendix I:
Comments from the
Department of the Interior

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United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

MAY 31 2016

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Director

Natural Resources and Environment

U.S. Government Accountability Office 441 G Street, NW

Washington, DC 20548

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Page 2

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If you have any questions or need additional information, please contact me.

Sincerely,

Kristen J. Sarri

Deputy Assistant Secretary

Policy, Management and Budget

Accessible Text

Accessible Text for Highlights Figure: Potential Time-Saving Steps of the Revised Communitization Agreement Process

Department of the Interior's revised guidance for the review and approval process of Indian communitization agreements (CAs) includes:

Two opportunities to eliminate duplicative reviews.

Two opportunities to reduce paperwork.

Two opportunities to expedite review.

Accessible Text for Figure 1: Example of Royalty Sharing Based on an Approved Communitization Agreement

- Three leases make up this hypothetical spacing unit – 1) private, 2) Indian, and 3) state.
- In this scenario, a communitization agreement (CA) is required because multiple leases, including an Indian lease, are included within the spacing unit.
- The approved CA results in the lessors sharing royalties based on production allocation –
 - Lease 1 – private – 50% allocation
 - Lease 2 – Indian – 25% allocation
 - Lease 3 – state – 25% allocation

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